

**AGRICULTURAL AFFAIRS**  
**ADMINISTRATIVE RULES REVIEW**

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*2006 Legislative Session*

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# *AGRICULTURAL AFFAIRS*

## **IDAPA 02 - DEPARTMENT OF AGRICULTURE**

### **02.02.09 - RULES REQUIRING THE INSPECTION OF POTATOES INTENDED FOR SALE OR OFFERED FOR SALE IN RETAIL OUTLETS**

**DOCKET NO. 02-0209-0501**

#### **NOTICE OF RULEMAKING - TEMPORARY RULE**

*The Following Notice Was Published With The Temporary Rule*

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2005.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section(s) 22-901, 22-911 and 22-2006, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of the supporting reasons for adopting a temporary rule:

**This change is needed to update and clarify the requirements under the current rule and list specific exotic pests of concern to the Idaho Potato Industry for which a zero tolerance will be specified.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This rule change is necessary to protect the public health, safety and welfare.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

There is no fee associated with this rule change as the work is already being performed by Federal-State inspectors inspecting Idaho-grown potatoes packed for resale to retail outlets.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Lee Stacey, Bureau Chief at (208) 332-8670 or Michael E. Cooper, Bureau Chief at (208) 332-8620.

DATED this 6th day of October, 2005.

Mike Everett, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790, Boise, Idaho 83701

# AGRICULTURAL AFFAIRS

**DEPARTMENT OF AGRICULTURE**  
**Inspection of Potatoes Intended or Offered for Sale**

**Docket No. 02-0209-0501**  
**TEMPORARY RULE**

Phone: (208) 332-8503  
Fax: (208) 334-2170

## THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE

### **02.02.09 - RULES REQUIRING THE INSPECTION OF POTATOES INTENDED FOR SALE OR OFFERED FOR SALE IN RETAIL OUTLETS** ***(Chapter 9, Title 22, Idaho Code, Section 22-911)***

#### **000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of sections 22-901, 22-911 and 22-2006, Idaho Code. (10-1-05)T

#### **001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.02.09, “Rules Requiring the Inspection of Potatoes Intended for Sale or Offered for Sale in Retail Outlets”. (10-1-05)T

**02. Scope.** These rules specify the general requirements for the inspection, grading, marking and retail sales of potatoes in the state of Idaho. (10-1-05)T

#### **002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. (10-1-05)T

#### **003. ADMINISTRATIVE APPEAL.**

There is no provision for administrative appeals before the Idaho State Department of Agriculture under this chapter. Hearing and appeal rights are pursuant to Title 67, Chapter 52, Idaho Code. (10-1-05)T

#### **004. INCORPORATION BY REFERENCE.**

IDAPA 02.02.09 incorporates by reference: Federal Marketing Order Number 945 – U.S.D.A. Handling Regulations May 4, 2000 Until Revised. Copies of this document may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, P.O. Box 790, Boise, Idaho 83701. (10-1-05)T

#### **005. ADDRESS, OFFICE HOURS, TELEPHONE AND FAX NUMBERS.**

**01. Physical Address.** The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-0790. (10-1-05)T

**02. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (10-1-05)T

**03. Mailing Address.** The mailing address for the central office is Idaho State Department of Agriculture, P. O. Box 790, Boise, Idaho 83701. (10-1-05)T

# AGRICULTURAL AFFAIRS

DEPARTMENT OF AGRICULTURE  
Inspection of Potatoes Intended or Offered for Sale

Docket No. 02-0209-0501  
TEMPORARY RULE

**04. Telephone Number.** The telephone number of the central office is (208) 332-8500. (10-1-05)T

**05. Fax Number.** The fax number of the central office is (208) 334-2170. (10-1-05)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture. (10-1-05)T

**0007. -- 099. (RESERVED).**

**100. ~~COMPULSORY~~ INSPECTIONS, ~~—WHOLESALE LEVEL—~~ TIME VALIDITY OF ~~CERTIFICATE DECLARED~~ RESTRICTIONS, AND IDENTIFICATION REQUIRED.**

~~All potatoes packed for resale to retail outlets in Idaho shall be inspected and have a Federal-State Certificate issued as to marked grade of the container. Accountable lots: A packer of potatoes packing for sale to retail outlets in Idaho may if he so desires, establish a designated lot for inspection that may be later divided into several sales. Simple identity of the lot will be maintained to the satisfaction of the inspector. The original Federal-State certificate will be valid for a period of seventy two (72) hours. All potatoes packed for resale to retail outlets in Idaho shall be inspected as outlined in Section 100.02 and shall meet the requirements of Federal Marketing Order number 945-USDA and the conditions outlined below: (3-20-77)(10-1-05)T~~

**01. Certification and Markings.** Each shipment packed for resale to retail outlets in Idaho shall be accompanied by a valid inspection certificate, numbered note sheet or be marked with a positive lot identification number (PLI) number. (10-1-05)T

**02. Inspections.** For other than Idaho or Oregon, inspections may be performed by any person or persons authorized under the USDA Agricultural Marketing Services Federal-State Service inspection program to inspect potatoes. (10-1-05)T

**03. Restrictions.** All potatoes packed for resale to retail outlets in Idaho under the provision of this rule shall be inspected as outlined in Section 100.02 and found free from: (10-1-05)T

**a.** Potato Tuberworm (*Phthorimaea operculella* (Zeller)). (10-1-05)T

**b.** Potato Wart (*Synchytrium endobioticum*). (10-1-05)T

**c.** Bacterial Ring Rot (*Clavibacter michiganense* subsp. *Sepedonicus*). (10-1-05)T

**101. LOTS TAGGED NOT FOR SALE -- REMOVAL THEREOF.**

Retail outlets ~~will~~ may be periodically checked by the ~~Bureau of Market Inspections~~ Idaho State Department of Agriculture. Lots found failing to grade as marked or otherwise found out of compliance with the provisions of this rule will be tagged "Not For Sale" until removed from display and regraded, destroyed or remarked to a lower grade if feasible.

(3-20-77)(10-1-05)T

# AGRICULTURAL AFFAIRS

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**DEPARTMENT OF AGRICULTURE**  
**Inspection of Potatoes Intended or Offered for Sale**

**Docket No. 02-0209-0501**  
**TEMPORARY RULE**

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**102. COMPLIANCE OR NON-COMPLIANCE CERTIFICATE.**

Each inspection at the retail outlet will be acknowledged by an ~~certificate~~ inspection report showing compliance or non-compliance. ~~(3-20-77)~~(10-1-05)T

**103. SECOND NOTICE ACTION -- NON-COMPLIANCE.**

A second inspection showing evidence of non-compliance in any calendar year will constitute sufficient grounds to proceed with prosecution in accordance with Section 108 of this rule. ~~(3-20-77)~~(10-1-05)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**105. BULK LOTS LABELED NOT FOR SALE -- REMOVAL THEREOF.**

Bulk potatoes failing to meet the grade shown or otherwise found out of compliance with the provisions of this rule shall be labeled "Not For Sale" until removed. They may be regraded, destroyed or re-marked to a lower grade if feasible. ~~(3-20-77)~~(10-1-05)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**108. PENALTIES FOR VIOLATIONS.**

Any person violating the provisions of these rules shall be subject to the penalty provisions of Section 22-2020, Idaho Code. (10-1-05)T

**1089. -- 999. (RESERVED).**

# *AGRICULTURAL AFFAIRS*

## **IDAPA 02 - DEPARTMENT OF AGRICULTURE**

### **02.06.06 - RULES GOVERNING THE PLANTING OF BEANS, (*PHASEOLUS SSP.*), IN IDAHO**

**DOCKET NO. 02-0606-0501**

### **NOTICE OF RULEMAKING - TEMPORARY RULE**

#### *The Following Notice Was Published With The Temporary Rule*

**EFFECTIVE DATE:** The effective date of the temporary rule is April 1, 2005.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule. The action is authorized pursuant to Title 22, Chapter 20, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of the supporting reasons for temporary rulemaking:

**There is less farm ground in Idaho being irrigated under rill irrigation as more is being converted to sprinkler irrigation. The current rules for the planting of kidney and garden beans require a two year history of rill irrigation planting in Idaho prior to a planting under sprinkler irrigation. The proposed changes are to amend IDAPA 02.06.06 Section 200.09.b. to read "All other beans" and eliminate Section 200.09.c. due to the constraints of the planting irrigation history requirement of two years under rill irrigation prior to a planting of one year under sprinkler irrigation. Also, a requirement for serology testing after the planting under sprinkler irrigation will be added.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

**The temporary change confers a benefit to the Idaho Bean Seed Industry. Unless the rule is amended, Idaho could lose much of its bean seed business.**

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

There is no fee or charge being imposed or increased through this temporary rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary rule, contact Michael E. Cooper, Bureau Chief at (208) 332-8620 or Garry West, Program Manager at (208) 736-2195.

DATED this 19th day of April, 2005.

# *AGRICULTURAL AFFAIRS*

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**DEPARTMENT OF AGRICULTURE**  
***The Planting of Beans, (Phaseolus SSP.)***

***Docket No. 02-0606-0501***  
**TEMPORARY RULE**

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Mike Everett  
Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8503  
Fax: (208) 334-2170

## **THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE**

### **200. REQUIREMENTS FOR PLANTING BEAN SEED IN IDAHO.**

In order to be eligible for planting bean seed in Idaho: (4-2-03)

**01. Idaho Grown Seed.** Seeds planted must be from a lot that has an in-state planting tag number (state number) assigned by the Department based on growing season and windrow inspections and be tagged by the Department with a Department In-State Planting Tag (Green tag) or be tagged by the ICIA in accordance with these rules. (4-2-03)

**02. Malheur County, Oregon Grown Seed.** Bean seed produced in Malheur County, Oregon must be from a lot inspected in the growing season and in the windrow for the regulated pests as defined in Section 012 of these rules and tagged by the Oregon Department of Agriculture. (4-2-03)

**03. Imported Seed Grown West of the Continental Divide in the Contiguous United States.** Imported bean seed grown west of the Continental Divide in the contiguous United States must: (4-2-03)

**a.** Be accompanied by a phytosanitary certificate issued by the regulatory agency of the state of origin, listing the diseases for which the crop was inspected, that must include the regulated pests as defined in Section 012 of these rules, and stating that the crop was field and windrow inspected; (4-2-03)

**b.** Seed lot shall successfully pass laboratory tests conducted by the Department from samples officially drawn in the state of Idaho by the Department; (4-2-03)

**c.** Must bear a Department approved tag (yellow); (4-2-03)

**d.** Shall not be planted under sprinkler irrigation; and (4-2-03)

**e.** Each field planted in Idaho must be submitted for field and windrow inspections. (4-2-03)

**04. Imported Seed Grown East of the Continental Divide in the Contiguous**

# AGRICULTURAL AFFAIRS

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## DEPARTMENT OF AGRICULTURE The Planting of Beans, (*Phaseolus SSP.*)

Docket No. 02-0606-0501  
TEMPORARY RULE

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**United States or of Foreign Origin.** Imported bean seed grown east of the Continental Divide in the Contiguous United States or of foreign origin to be planted in Idaho shall be planted only on an approved trial ground as outlined in Section 250. (4-2-03)

**05. Idaho Grown Seeds Shipped East of the Continental Divide in the Contiguous United States or to a foreign Country and Returned.** Bean seeds shipped east of the Continental Divide in the contiguous United States or to a foreign country may be returned to Idaho but upon return shall be planted on an approved trial ground as outlined in Section 250. (4-2-03)

**06. Contaminated Seeds.** The seeds from any bean field found or known to be contaminated with a regulated pest, as defined in Section 012 of these rules, shall not be planted in Idaho. (4-2-03)

**07. True Identity of Seed Lots.** Failure to maintain the true identity of any seed lot intended for seed purposes will automatically disqualify that lot for future planting in Idaho. (4-2-03)

**08. Tags.** Bean seeds planted in Idaho shall be from an approved lot bearing an approved tag on each bag or container, stating the kind, variety, and lot number. The following is a list of approved planting tags in Idaho: (4-2-03)

- a. Department in-state planting tag (green tag); (4-2-03)
- b. Department approved tag (yellow tag); (4-2-03)
- c. ICIA tag, provided the lot was field and windrow inspected by ICIA in accordance to these rules; or (4-2-03)
- d. Oregon Department of Agriculture inspection tag. (4-2-03)

**09. Irrigation.** (4-2-03)

a. Pintos, Red Mexicans, Pinks, Great Northerns, Small Whites, Navy Beans, Black Turtles, and Lima beans: (4-2-03)

i. First generation of seed grown in Idaho must be grown and inspected under rill irrigation. (4-2-03)

ii. Thereafter, the seed may be grown and inspected for two (2) consecutive generations in Idaho under sprinkler irrigation. (4-2-03)

iii. Seed grown under sprinkler irrigation for two (2) consecutive generations shall then be grown and inspected for one (1) generation in Idaho under rill irrigation. (4-2-03)

b. ~~Cranberry types, Taylor Horticultural types, and Borlotto types~~ All other beans: (4-2-03)(4-1-05)T



# AGRICULTURAL AFFAIRS

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## DEPARTMENT OF AGRICULTURE The Planting of Beans, (*Phaseolus SSP.*)

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Docket No. 02-0606-0501  
TEMPORARY RULE

- i. First generation of seed grown in Idaho must be grown and inspected under rill irrigation. (4-2-03)
- ii. Thereafter, the seed may be grown and inspected for one (1) generation in Idaho under sprinkler irrigation. (4-2-03)
- iii. ~~To be eligible for a second consecutive planting of seed under sprinkler~~ Any time seed has been grown and inspected for one (1) generation in Idaho under sprinkler irrigation and prior to planting the seed under sprinkler irrigation or rill irrigation in Idaho, the seed must be sampled and laboratory tested by the Department in Idaho and found negative for the regulated pests. (4-2-03)(4-1-05)T
- iv. Following ~~the~~ a second consecutive planting of ~~the~~ seed under sprinkler irrigation in Idaho, the seed must be sampled and laboratory tested by the Department in Idaho and found negative for the regulated pests. (4-2-03)(4-1-05)T
- v. After meeting the requirements of Subsections 200.09.b.i. through 200.09.b.iv., the seed must be grown and inspected for one (1) generation in Idaho under rill irrigation. (4-2-03)
- ~~e.~~ ~~All other beans:~~ (4-2-03)
- ~~i.~~ ~~First two (2) generations of seed grown in Idaho must be grown and inspected under rill irrigation.~~ (4-2-03)
- ~~ii.~~ ~~Thereafter, the seed may be grown and inspected for one (1) generation in Idaho under sprinkler irrigation.~~ (4-2-03)
- ~~iii.~~ ~~Following any generation of seed grown under sprinkler irrigation in Idaho, the seed must be grown and inspected for two (2) consecutive generations in Idaho under rill irrigation.~~ (4-2-03)

# ***AGRICULTURAL AFFAIRS***

## **IDAPA 11 - IDAHO STATE POLICE**

### **11.02.01 - RULES GOVERNING THE IDAHO STATE BRAND BOARD**

#### **DOCKET NO. 11-0201-0502 (FEE RULE)**

#### **NOTICE OF RULEMAKING - TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2005.

**AUTHORITY:** In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 25-1160(a), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than February 22, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Rule change raises the cattle fee from \$.84 to \$.94, and the pasture cattle fee from \$.42 to \$.47. The Idaho Brand Board fee increase enacted in FY2005 was insufficient to meet Brand Board costs. The FY2005 projection shows a deficit of \$598,800, with balances reaching just \$700 in FY2006. The Idaho Brand Board, in its September 15, 2005 meeting, approved a \$.10 increase in cattle brand inspection fees and a \$.05 increase in pasture cattle brand inspection fees, effective October 1, 2005.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1) (a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: The Idaho Brand Board fee increase enacted in FY2005 was insufficient to meet Brand Board costs. The FY2005 projection shows a deficit of \$598,800, with balances reaching just \$700 in FY2006. The Brand Board requires increased funding to continue its public safety services.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: the fee is an increase in the cattle fee from \$.84 to \$.94, and the pasture cattle fee from \$.42 to \$.47.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: Not applicable. This rule change impacts only dedicated fund 0229-15-Brand Inspector.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was

# AGRICULTURAL AFFAIRS

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**IDAHO STATE POLICE  
Rules Governing the Idaho State Brand Board****Docket No. 11-0201-0502 (Fee Rule)  
TEMPORARY RULE**

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not conducted because this matter is under the sole jurisdiction of the Brand Board. During its September 15, 2005 meeting, the Board approved the increases of \$.10 and \$.05, respectively.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Larry A. Hayhurst at 208-884-7070.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before February 22, 2006.

DATED this 1st day of November, 2005.

Larry A. Hayhurst  
State Brand Inspector  
Idaho State Brand Board  
700 S. Stratford  
P. O. Box 1177, Meridian, ID 83680-1177  
208-884-7070 / Fax 208-884-7097

## THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE

### 034. SCHEDULE OF FEES FOR THE IDAHO STATE BRAND BOARD.

**01. Fees.** Fees authorized by the State Brand Board and to be collected by the State Brand Inspector are as follows:

SCHEDULE OF FEES		
Recording of a Brand	\$50 initial recording fee plus a \$10 per year prorated staggered renewal fee every year thereafter	
Transfer of a recorded brand	\$25.00	
Renewal of a recorded brand (Every five years)	\$50.00	
Duplicate brand registration certificate	\$ 1.50	
Ownership and transportation certificate	\$25.00	
Duplicate ownership and transportation certificate	\$ 5.00	
Annual inspection equine or bovine	\$ 5.00	
	CATTLE	HORSES
Brand inspection (per head)	\$ . <del>89</del> 4	\$ 1.50
Idaho livestock to pasture (per head)	\$ . <del>42</del> 7	\$ .75
Minimum auction fee	\$50.00	\$50.00

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**IDAHO STATE POLICE**  
**Rules Governing the Idaho State Brand Board****Docket No. 11-0201-0502 (Fee Rule)**  
**TEMPORARY RULE**

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SCHEDULE OF FEES		
Minimum field brand inspection fee	\$10.00	\$10.00
Courtesy brand inspection	\$ .894	\$ 1.50

Fees To Be Collected By The State Brand Inspector For Other State Agencies:	
Idaho Beef Council (per head)	\$1.00
Idaho Horse Board (per head)	\$3.00
Idaho Department of Agriculture:	
Animal health (per head)	\$ .22
Predator control (per head)	\$ .04

~~(10-18-04)T~~(10-1-05)T

**02. Due and Payable.** Pursuant to Section 25-1160(5), Idaho Code, all brand inspection fees, and all other fees required to be collected by the Brand Inspector are due and payable at the time of inspection, except that livestock owners may make arrangements with a deputy brand inspector to pay for all accumulated brand inspection fees within each seven (7) day period. Failure to comply with this rule will cancel the previously approved schedule and shall make all fees immediately due and payable. Feedlots, currently approved by the Idaho Department of Agriculture, and slaughter plants are exempt from the minimum brand inspection fee. Other minimum brand inspection fees may be waived at the discretion of the State Brand Inspector or District Brand Supervisor. (3-30-01)